

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32(2) (b)

Description of Case.

W.P. No. 2519 (S/S) of 2006

Date of decision :- 28-9-2006

A.F.R. (Approved for reporting)

Not approved for reporting

Date :- 28-9-2006

Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

**Civil Misc. Writ Petition No. 2519 (S/S) of 2001
(Old No. 46095/2000)**

Smt. Krishna Devi
W/o Munne Lal
Sweeper (Safai Karmachari) Nagar Panchayat
Mahua Dabra, Udham Singh Nagar,
R/o Nagar Panchayat, Mahua Dabra,
District –Udham Singh Nagar Petitioner

Versus

1. Director, U.P. Urban and Local Self Government
Utter Pradesh
2. Commissioner, Kumaon Division, Nainital
3. District Magistrate, Udham Singh Nagar
4. Chairman, Nagar Panchayat Mahua Dabra,
Udham Singh Nagar
5. Executive Officer, Nagar Panchayat at Mahua Dabra,
Udham Singh Nagar ...Respondents

Mr. Yogesh Pandey, learned counsel for the petitioner
Sri N.P. Sah, learned counsel for the respondent Nos. 1,2 &3.
Sri D.S. Patni, learned counsel for the respondent Nos. 4 and 5.

Per Hon'ble J.C.S. Rawat, J.

1. By means of this writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following relieves:

“i) To issue a writ, order direction in the nature of certiorari quashing the order impugned dated 05.03.1999 passed by respondent No. 4 (annexure- 1 to the writ petition) against the petitioner.

ii) To issue a writ order or direction in the nature of Mandamus directing the respondents no. 4 & 5 to pay the suspension allowance of the petitioner with the rate of 50% and also with the rate of 75%.

iii) To issue, any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iv) To award the cost of the writ petition to the petitioner.”

2. The petitioner had been working as Safai Karamchari in Nagar Panchayat Mahua Dabra, Udham Singh Nagar. It is

revealed from the impugned order that during the inspection, it was found that the drains were filled and sweeping was not found to be done somewhere also by the petitioner. It was also informed that the petitioner had not been present in her ward for the last ten days. The petitioner was suspended by the respondent Nos. 4 with the direction that the petitioner will get suspension allowance according to the rules. Copy of the said suspension order was served upon the petitioner. Feeling aggrieved by the said suspension order, the present petition has been filed.

3. Counter affidavit was filed by the respondents in which the allegations made in the suspension order had been reiterated.

4. Heard Sri Yogesh Pandey, learned counsel for the petitioner; Sri N.P. Sah, learned standing counsel for the respondent Nos. 1, 2 & 3; Sri D.S. Patni, learned counsel for the respondent Nos. 4 & 5 and perused the record.

5. It was contended on behalf of the petitioner that the petitioner had preferred objection against the said suspension order in which he had categorically stated that the respondent No. 4 wanted to take work from the petitioner in his fields by putting pressure and threats of her services. It was also threatened, if she would not work in his field, she would be removed from her services. The petitioner had been working in his field and the drains of her ward automatically filled and when she was asked from respondent No. 4 to go in her ward for work, the respondent No. 4 become annoyed and thereafter, he passed the impugned order. Learned counsel for the respondent Nos. 4 and 5

refuted the contention and contended that the petitioner had made false allegations against the respondent No. 4. While exercising the jurisdiction under Article 226 of the Constitution of India, the court is not sitting as an appellate court. It is well settled position of law that the High Court exercising the power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct the errors of law or procedural error or violation of principles of natural justice. The judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that individual receives fair treatment and not to correct the errors. The court may interfere where authority held the proceedings against the delinquent officer in a manner inconsistent with the principles of natural justice.

6. It is well settled principle of law when the appointing authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by appointing authority. The Hon'ble Apex Court has held in **State of Orissa Vs. Bimal Kumar Mohanty (1994) 4 SCC p/126** whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different

matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered.

7. From the suspension order it is clear that the allegation against the petitioner is of dereliction of duty. The petitioner's duty is to keep the city clean and if the petitioner commits any default in the said work, it would cause the annoyance to the public and it would also hammer the public health. The misconduct of the petitioner is of such nature that has caused serious consequence to public health, as such, the suspension order passed by the competent authority was justified. In the circumstances, the High Court would not interfere with the order of suspension passed by the respondents. In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they were exonerated, they would be entitled to all their benefits from the date of the order of suspension.

8. Learned counsel for the petitioner further contended that the inquiry had not been concluded since then and the respondents are prolonging the inquiry. The petitioner has also contended that no chargesheet has been served upon the petitioner and it had not been concluded so far. It was further contended that the respondent No. 4 had falsely stated that the petitioner is not participating in the inquiry. The learned counsel for the respondent Nos. 4 and 5 refuted the contention and contended that the petitioner had not been cooperating during the inquiry, as such, the inquiry could not be completed. It had been specifically stated in the counter affidavit that the chargesheet was prepared in the

Year 1999 and thereafter, the said chargesheet was sent for service. The service could not be effected and the said chargesheet was affixed & pasted on the house of the petitioner. The petitioner was given several dates but she did not bother to appear before the authority. The petitioner had filed the rejoinder affidavit in which she had stated that she was not served with any show cause notice or chargesheet by the respondent No. 4. It was also alleged in the rejoinder affidavit that the alleged story of service of notice through pasting the same at her house is absolutely false and no notice or letter were served by the respondents at any time. The counter affidavit which had been filed alongwith the entire record clearly reveals that the petitioner had not been participating in the inquiry. Assuming that she had no notice when the counter affidavit was filed, the copy of the chargesheet and other relevant documents were handed over to the petitioner by way of counter affidavit and thereafter, she came to know about the chargesheet and other relevant documents. It would have been a duty of the petitioner to appear before the inquiry officer and to raise his objection to file the reply of the chargesheet so that inquiry could be concluded. Learned counsel for the petitioner could not demonstrate me that she had filed any objection before the inquiry officer and she had appeared before the inquiry officer. This conduct itself shows that the petitioner has not been cooperating with the inquiry officer. I so not find any merit in the contention of the learned counsel for the petitioner.

9. In view of the foregoing discussion, the writ petitioner is devoid of merit and is liable to be dismissed and dismissed accordingly.

10. However, it is made clear that the respondent No. 4 would conclude the inquiry a period of three months from the date of the receipt of the order. The petitioner is also directed to cooperate in the matter of inquiry during this period.

11. All applications pending in this case are stand disposed of in terms of the judgment. Interim order dated 24.10.2000 is also hereby vacated.

(J.C.S. Rawat, J.)

28th September, 2006
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